

(2) Erroneous employer contributions will be returned to the employing agency only if the negative adjustment record is posted by the TSP record keeper within one year of the date the erroneous contribution was posted. If one year or more has elapsed when the negative adjustment record is posted, the amount computed under paragraph (c) of this section will be removed from the participant's account and used to offset TSP administrative expenses;

(3) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted and the amount computed under paragraph (c) of this section is equal to or greater than the amount of the adjustment, the employing agency will receive the full amount of the erroneous contribution. Any earnings attributable to the erroneous contribution will be removed from the participant's account and used to offset TSP administrative expenses;

(4) If the erroneous contribution has been in the participant's account for less than one year when the negative adjustment record is posted, and the amount computed under paragraph (c) of this section is less than the amount of the adjustment, the employing agency will receive the amount of the erroneous contribution reduced by the investment loss; and

(5) An employing agency's obligation to submit negative adjustment records to remove erroneous contributions from a participant's account is not affected by the length of time the contributions have been in the account.

(f)(1) If multiple negative adjustments for the same attributable pay date for a participant are posted on the same business day, the amount removed from the participant's account and used to offset TSP administrative expenses, or returned to the employing agency, will be determined separately for each adjustment. Earnings and losses for erroneous contributions made on different dates will not be netted against each other. In addition, for a negative adjustment for any attributable pay date, gains and losses from different sources of contributions or different TSP Funds will not be netted against each other. Instead, for each

attributable pay date each source of contributions and each TSP Fund will be treated separately for purposes of these calculations. The amount computed by applying the rules in this section will be removed from the participant's account pro rata from all funds, by source, based on the allocation of the participant's account among the TSP Funds when the transaction is posted; and

(2) If there is insufficient money in the same source of contributions to cover the amount to be removed or the amount of the requested adjustment, the negative adjustment record will be rejected.

[70 FR 32210, June 1, 2005, as amended at 75 FR 74608, Dec. 1, 2010; 77 FR 26425, May 4, 2012; 85 FR 40570, July 7, 2020]

§ 1605.13 Back pay awards and other retroactive pay adjustments.

(a) *Participant not employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was separated from Government service or was not appointed to a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized:

(1) If the participant is reinstated or retroactively appointed to a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized, immediately upon reinstatement or retroactive appointment the employing agency must give the participant the opportunity to submit a contribution election to make current contributions. The contribution election will be effective as soon as administratively feasible, but no later than the first day of the first full pay period after it is received.

(2) The employing agency must give a reinstated or retroactively appointed participant the following options for electing makeup contributions:

(i) The reinstated or retroactively appointed participant may submit a new contribution election for purposes of makeup contributions if he or she would have been eligible to make such

an election but for the erroneous separation or erroneous failure to appoint; or

(ii) If a reinstated participant had a contribution election on file when he or she separated, the contribution election the participant had on file when he or she separated may be reinstated for purposes of makeup contributions.

(3) All contributions made under this paragraph (a) and associated breakage will be invested according to the participant's contribution allocation on the posting date. Breakage will be calculated using the share prices for the default investment fund in effect for the participant in accordance with § 1605.2 unless otherwise required by the employing agency or the court or other tribunal with jurisdiction over the back pay case.

(b) *Participant employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was employed in a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized:

(1) The participant will be entitled to make up contributions for the period covered by the back pay award or retroactive pay adjustment only if for that period—

(i) The participant had designated a percentage of basic pay to be contributed to the TSP; or

(ii) The participant had designated a dollar amount of contributions each pay period which equaled the applicable ceiling (FERS or CSRS) on contributions per pay period, and which, therefore, was limited as a result of the reduction in pay that is made up by the back pay award or other retroactive pay adjustment;

(2) The employing agency must compute the amount of additional employee contributions, agency matching contributions, and agency automatic (1%) contributions that would have been contributed to the participant's account had the reduction in pay leading to the back pay award or other retroactive pay adjustment not occurred; and

(3) All contributions under this paragraph (b) and associated breakage will

be posted to the participant's account based on the participant's contribution allocation on the posting date. Breakage will be calculated in accordance with § 1605.2.

(c) *Contributions to be deducted before payment or other retroactive pay adjustment.* Employee makeup contributions required under paragraphs (a) and (b) of this section:

(1) Must be computed before the back pay award or other retroactive pay adjustment is paid, deducted from the back pay or other retroactive pay adjustment, and submitted to the TSP record keeper;

(2) Must not cause the participant to exceed the annual contribution limit(s) contained in sections 402(g), 415(c), or 414(v) of the I.R.C. (26 U.S.C. 402(g), 415(c), 414(v)) for the year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year; and

(3) Must be accompanied by attributable agency matching contributions. In any event, regardless of whether a participant elects to make up employee contributions, the employing agency must make all appropriate agency automatic (1%) contributions associated with the back pay award or other retroactive pay adjustment.

(d) *Prior withdrawal of TSP account.* If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government service upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount withdrawn to his or her TSP account. The right to restore the withdrawn funds will expire if the participant does not notify the Board within 90 days of reinstatement. If the participant returns the funds that were withdrawn, the number of shares purchased will be determined by using the share price of the applicable investment fund on the posting date. Restored funds will not incur breakage.

(e) Participants who are covered by paragraph (d) of this section and who elect to return funds that were withdrawn may also elect to reinstate a

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loan which was previously declared to be a taxable distribution.

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§ 1605.14 Misclassified retirement system coverage.

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected:

(1) Employee contributions that exceed the applicable contribution percentage for the pay period(s) involved may remain in the participant's account. The participant may request the return of excess employee contributions made on or after January 1, 2000; those contributed before January 1, 2000, must remain in the participant's account. If the participant requests a refund of employee contributions, the employing agency must submit a negative adjustment record to remove these funds under the procedure described in § 1605.12.

(2) The TSP will forfeit all agency contributions that were made to a CSRS participant's account. An employing agency may submit a negative adjustment record to request the return of an erroneous contribution that has been in the participant's account for less than one year.

(b) If a FERS participant is misclassified by an employing agency as a CSRS participant, when the misclassification is corrected:

(1) The participant may not elect to have the contributions made while classified as CSRS removed from his or her account;

(2) The participant may, under the rules of § 1605.11, elect to make up contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification;

(3) The employing agency must, under the rules of § 1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified;

(4) If the retirement coverage correction is a Federal Employees' Retirement Coverage Act (FERCCA) correction, the employing agency must submit makeup employee contributions on late payment records. The participant is entitled to breakage on contributions from all sources. Breakage will be calculated pursuant to § 1605.2. If the retirement coverage correction is not a FERCCA correction, the employing agency must submit makeup employee contributions on current payment records; in such cases, the employee is not entitled to breakage. Agency makeup contributions may be submitted on either current or late payment records; and

(5) If employee contributions were made up before the Office of Personnel Management implemented its regulations on FERCCA correction, and the correction is considered to be a FERCCA correction, an amount to replicate TSP lost earnings will be calculated by the Office of Personnel Management pursuant to its regulations and provided to the employing agency for transmission to the TSP record keeper.

(c) If a participant was misclassified as either FERS or CSRS and the retirement coverage is corrected to FICA only, the participant is no longer eligible to participate in the TSP.

(1) Employee contributions in the account are subject to the rules in paragraph (a)(1) of this section.

(2) Employer contributions in the account are subject to the rules in paragraph (a)(2) of this section.

(3) The TSP will consider a participant to be separated from Government service for all TSP purposes and the employing agency must submit an employee data record to reflect separation from Government service. If the participant has an outstanding loan, it will be subject to the provisions of 5 CFR 1655.13. The participant may make a TSP post-employment withdrawal election pursuant to 5 CFR part 1650, subpart B, and the withdrawal will be subject to the provisions of 5 CFR 1650.60(b).

(d) If a FERS or CSRS participant is misclassified by an employing agency as FICA only, when the